



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,267	07/18/2003	Darrell James Monnie	115171-003	3505

24573 7590 11/15/2006

BELL, BOYD & LLOYD, LLC
PO BOX 1135
CHICAGO, IL 60690-1135

EXAMINER

LE, HUYEN D

ART UNIT PAPER NUMBER

2615

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/623,267

Applicant(s)

MONNIE ET AL.

Examiner

HUYEN D. LE

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
4a) Of the above claim(s) 5-7, 16-25, 28, 30, 33 and 35 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☐ Claim(s) 1-4, 8-15, 26, 27, 29, 31, 32 and 34 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 26, 27, 29, 31, 32 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Schaefer (U.S. patent 3,182,746).

Regarding claims 1-3, 26-27 and 31-32 Schaefer teaches a method and apparatus of a device that comprises a vocal sound receiver (6, 12, 14), a sound director (10) having at least one hollow portion positioned between the first end and second end (figures 1, 2) and ear sound deliverer (8) including a head engagement member as claimed.

Regarding claims 29 and 34, it is inherent that the Schaefer device can be worn and adapted for delivering the vocal sound to a right ear or a left ear of a user.

3. Claims 1-3, 26, 27, 29, 31, 32 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Atkinson (U.S. patent 738,593).

Regarding claims 1-3, 26-27 and 31-32 Atkinson teaches a method and apparatus of a device that comprises a vocal sound receiver (1), a sound director (3) having at least one hollow portion positioned between the first end and second end (figure 1) and ear sound deliverer (2) including a head engagement member as claimed.

Art Unit: 2615

Regarding claims 29 and 34, it is inherent that the Atkinson device can be worn and adapted for delivering the vocal sound to a right ear or a left ear of a user.

4. Claims 1-4, 26, 27, 29, 31, 32, 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Mickelson et al. (U.S. patent 6,229,901).

Regarding claims 1-2, 26-27, 29, 31-32 and 34, Mickelson teaches a method and apparatus of a device that comprises a vocal sound receiver (11, 12, 14), a sound director (11) having at least one hollow portion positioned between the first end and second end (figures 1, 2, 3) and ear sound deliverer (12, 15, 20) coupled to the second end as claimed.

Regarding claim 3, Mickelson teaches the ear sound deliverer that includes a head engagement member (16) as claimed (figures 1 and 4).

Regarding claim 4, Mickelson teaches one head securing member (16, 18, 19, 21, 22) that is removably attached to the ear sound deliverer as claimed (figures 1 and 4).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

Art Unit: 2615

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schaefer (U.S. patent 3,182,746) in view of May (U.S. patent 2,998,497) or Golliher (U.S. patent 5,407,113).

Regarding claim 4, Schaefer does not specifically teach a head securing member removably attached to the sound deliverer as claimed. However, providing a head support for the earpiece is known in the art.

May or Golliher teaches a head support for a hand set (see figures 1-2 in May and figures 1, 4, 5 in Golliher)

Therefore, it would have been obvious to one skilled in the art to provide a head support or a head securing member, as taught by May or Golliher, for the device of Schaefer for better supporting the earpiece to a variety of head sizes of the wearer.

7. Claims 8-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson (U.S. patent 738593) in view of Bonecutter (U.S. patent 2,481,387) or Malekos (U.S. patent 4,481,256).

Regarding claims 8-12, Atkinson teaches a device that comprises a vocal sound receiver (1), a sound director (3) having a first hollow portion (1, 4), a second hollow portion (3) and a third hollow portion (2, 8), an ear sound deliverer (2) having a head engagement member (10) as claimed (figure 1).

Art Unit: 2615

Atkinson does not specifically teach a head securing member coupled to the sound director as claimed. However, providing a head support or a head securing member for the headphone or handsets is known in the art.

Bonecutter or Malekos teaches a head support for a handset (see figures 1-3 in Bonecutter and figures 1-2 and 5 in Malekos)

Therefore, it would have been obvious to one skilled in the art to provide a head support, as taught by Bonecutter or Malekos, for the device of Atkinson for better supporting the device to the head of the wearer.

Regarding claims 13 and 15, Atkinson in view of Bonecutter or Malekos teaches the sound director that includes a fastener as claimed.

Regarding claim 14, it is obvious that the device of Atkinson in view of Bonecutter or Malekos can be interchangeable as claimed.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 2615

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



HL
November 12, 2006



HUYEN LE
PRIMARY EXAMINER